

### **REMARKS/ARGUMENTS**

Reconsideration of this application in light of the above amendments and following comments is courteously solicited.

Initially, Applicant wishes to urge that the instant amendment after final should be entered as the amendment merely incorporates into independent claim 57 the subject matter of dependent claim 58 which previously depended directly from independent claim 57. Accordingly, the instant amendment does not raise new issues which require further search and/or consideration. The amendment also reduces the number of claims for purposes of appeal as well as reduces the issues for purposes of appeal. Accordingly, Applicant submits that the instant amendment is properly entered at this stage in the prosecution.

Claims 59 and 60 have been amended so as to depend directly from independent claim 57 rather than dependent claim 58 which is now cancelled. Claim 106 has been amended so as to comply with 35 U.S.C. 112, second paragraph. None of these amendments are improper at this stage of the prosecution and therefore should be entered for purposes of appeal.

It is respectfully submitted that all of the claims as amended comply with the formal requirements of 35 U.S.C. 112, first and second paragraphs, and patentably define over the prior art under 35 U.S.C. 103 for the reasons set forth hereinbelow.

Initially, with regard to the Examiner's drawing objections as set forth on pages 2 and 3 of the Examiner's final rejection, Applicant respectfully requests the Examiner to reconsider this objection. In this regard the Examiner's attention is drawn to Figs. 9 and 10 which clearly show the connecting parts identified by reference numerals 910 and 1010. In addition, the

Examiner's attention is drawn to paragraph [0056] of the substitute specification (page 19) which describes Figs. 9 and 10 and discusses the connecting parts 910 and 1010, respectively. In light of the foregoing, it is respectfully submitted that the drawings as currently pending are in compliance with 37 C.F.R. 1.21 and 37 C.F.R. 1.83.

The Examiner rejected previously submitted dependent claim 58 (which has now been incorporated into independent claim 57) under 35 U.S.C. 103 as being unpatentable over Karl (EP 0038524) in view of Forsline (U.S. Patent 5,749,117) and in further view of Vayrette (U.S. Patent 6,672,314). As to how this rejection applies to the claims as amended herein, it is respectfully traversed.

Initially, with respect to the Forsline '117 document, Applicant submits that this piece of prior art constitutes non-analogous prior art. The Forsline document is drawn to a paint brush. It is difficult to imagine that one skilled in the art when dealing with an applicator for distributing a cosmetic preparation on the skin would look to a paint brush for relevant teachings. Accordingly, it is respectfully submitted that the Forsline reference constitutes non-analogous art. Be that as it may, the Examiner's interpretation of the Forsline reference is without merit. The Examiner states on page 4 of the Office action that Forsline discloses the following:

"... the applicator portion being made of thermoplastic elastomer having a hardness of between 2 and 45 Shore A..."

The Examiner's position is untenable when one reads the Forsline document. Contrary to the Examiner's statement of a teaching, the Forsline document actually sets forth that the "...hardness, after cure, of about 20-70..." and "...the catalyst used to cure the preferred silicone is platinum based...". One skilled in

the plastics art knows that elastomers are not cured.

Accordingly, the material of Forsline is not the material of the instant application.

Be that as it may with regard to the Forsline patent, the tertiary reference to Vayrette fails to teach the subject matter of previously submitted dependent claim 58 which has now been incorporated into the independent claim 57. Claim 57 as amended now sets forth the following:

"...connecting layer (32) comprising a mixing layer comprising the applicator portion plastic material and the holding portion plastic material."

Thus, the connecting layer 32 is a mixture of the materials of holding portion 18 and applicator portion 30. In this regard the Examiner's attention is drawn specifically to paragraph [0047] of the substitute specification with particular emphasis on the last twelve lines of that paragraph which set forth the following:

"...the applicator portion 30 of thermoplastic elastomer, silicone rubber, NBR, soft PVC or the like is injected on to the holding portion 18 immediately after injection-molding thereof, a connecting layer 32 is formed, in which the various kinds of plastic materials of the holding portion 18 and the applicator portion 30 mix and mingle with each other (for example by diffusion). When such an applicator is cut open, that mixing layer can be seen and analysed with the naked eye or under the microscope respectively. The connecting layer 32 will be of greater or lesser thickness depending on the respective temperature of the holding portion when the applicator portion is injected thereonto."

Thus, the material of the connecting layer 32 is a defined mix of the materials of portion 18 and portion 30 which mix and

minge to form the claimed mixing layer. Such a defined mixing layer is not shown in the Vayrette reference. In this regard, the Examiner's attention is drawn to the paragraph bridging columns 7 and 8 of the '314 document which sets forth the following:

"Using the two-shot injectin molding technique which is well known in the prior art it is possible to produce, in a single mold and in a single piece, the connecting ring 26 from a rigid or semi-rigid material, the membrane 130 from elastomer, and the base 22 with the teeth 20 from a rigid or semirigid material.".

Accordingly, it is respectfully submitted that claim 57 as amended patentably defines over the sum total teachings of the prior art cited and applied by the Examiner under 35 U.S.C. 103. The early issuance of a formal notice of allowance is respectfully requested.

An earnest and thorough attempt has been made by the undersigned to resolve the outstanding issues in this case and place same in condition for allowance. If the Examiner has any questions or feels that a telephone or personal interview would be helpful in resolving any outstanding issues which remain in this application after consideration of this amendment, the Examiner is courteously invited to telephone the undersigned and the same would be gratefully appreciated.

It is submitted that the claims as amended herein patentably define over the art relied on by the Examiner and early allowance of same is courteously solicited.

If any fees are required in connection with this case, it is respectfully requested that they be charged to Deposit Account No. 02-0184.

Respectfully submitted,

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